

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
WILLIAM H. MARRA d/b/a ON WHEELS	§	
COMPUTER REPAIR SERVICE	§	
Defendant	§	<u>261st</u> JUDICIAL DISTRICT

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

On this date, came on for hearing the above-entitled and numbered cause in which the STATE OF TEXAS (hereinafter “State”), acting by and through Attorney General of Texas, GREG ABBOTT, is Plaintiff, and WILLIAM H. MARRA d/b/a ON WHEELS COMPUTER REPAIR SERVICE is Defendant. Through their respective attorneys of record, Plaintiff and Defendant agree to the entry of this AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION.

I. STIPULATED FACTS

The parties, through their respective attorneys, make the following stipulations:

1. Texas has filed its complaint pursuant the Texas Telemarketing Disclosure and Privacy Act, TEX. BUS. & COM. CODE § 44.001 *et seq.* (Vernon Supp. 2003) (“TTDPA”).
2. The parties have compromised and settled the State’s claim for civil penalties, investigative costs, attorneys’ fees, and court costs.
3. The Office of the Attorney General and Defendant agree to and do not contest the entry of this Agreed Final Judgment and Permanent Injunction;
4. Defendant does not contest jurisdiction or venue in this case;
5. Defendant has waived issuance of a writ of injunction and has waived the requirements of Texas Rules of Civil Procedure 687-692;

6. The signatory hereto is authorized to sign this Agreed Final Judgment and Permanent Injunction on behalf of Defendant; and has read the Agreed Final Judgment and Permanent Injunction and agrees to entry of same on behalf of Defendant; and

7. This Agreed Final Judgment and Permanent Injunction in no way affects any individual's right of action.

The Court has read the pleadings and stipulations of the parties, and it appears to the Court that all parties agree to the entry of this judgment and that they have approved its entry as indicated by the signatures of the parties and their attorneys below:

II. DEFINITIONS

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that as used in this Judgment, the following definitions shall apply:

- A. "Consumer good or service" means property of any kind that is normally used for personal, family, or household purposes. The term does not include a security, as defined by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes).
- B. "Effective date" means the date on which this Agreed Final Judgment and Permanent Injunction is entered by the Court.
- C. "Express invitation or permission" means consent which is affirmatively stated in direct terms, definitely and explicitly, and not left to inference or implication.
- D. "Telemarketing call" means an unsolicited telephone call made to (i) solicit a sale of a consumer good or service; (2) solicit an extension of credit for a consumer good or service; or (3) obtain information that may be used to solicit a sale of a consumer

good or service or to extend credit for the sale. The term “telemarketing call” includes an unsolicited telephone call made to encourage or induce the recipient to attend a face-to-face meeting or otherwise receive a future solicitation for the sale of a consumer good or service or an extension of credit for a consumer good or service.

- E. “Texas no-call list” means the database of telephone numbers of consumers in the State of Texas who object to receiving unsolicited telemarketing calls which is maintained by the Public Utility Commission of Texas (or its agent) pursuant to section 44.101 of the TTDPA.
- F. “Unsolicited telephone call” means a telephone call that is transmitted to any person without that person’s prior express invitation or permission.
- G. “Established Business Relationship” means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber’s purchase or transaction with the entity within eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber’s inquiry or application regarding products or services offered by the entity within three (3) months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

III. INJUNCTIVE RELIEF

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant, and Defendant’s officers, agents, servants, employees and any other persons or entities in active concert or participation with Defendant, shall be permanently enjoined from:

- A. Making or causing to be made any telemarketing call to a telephone number in the State of Texas until after such time that Defendant has purchased and downloaded the current Texas no-call list; and
- B. Making or causing to be made a telemarketing call to any telephone number that has been published on the then-current Texas no-call list more than sixty (60) days unless such call would be exempted from the application of the TTDDPA pursuant to section 44.003(b);
- C. Making or causing to be made a telemarketing call to a person in the State of Texas that has expressed his or her desire, either directly to Defendant or through the inclusion of such person's telephone number on a legally binding no call list (including any list maintained by a federal governmental agency), not to receive such telemarketing calls;
- D. Initiating any telemarketing call to a residential telephone line using an artificial or prerecorded voice to deliver a message unless the call is made to a person with whom Defendant has an established business relationship at the time the call is made; and
- E. Failing to provide Defendant's true name, address, and telephone number to any consumer, consumer protection agency or organization, or law enforcement agency that asks for such information, including but not limited to the Texas Attorney General's Office and the Public Utility Commission.

IT IS FURTHER ORDERED that Defendant shall:

- A. Immediately adopt and implement written procedures that are reasonably calculated to insure compliance with all legally binding no call laws, including but not limited

to the TTDPA and effectively prevent telemarketing calls that are in violation of such laws, including taking corrective action when appropriate;

- B. Provide a copy of the written procedures Defendant adopts pursuant to the preceding paragraph to any third party telemarketing agency with whom Defendant does business and require such third party telemarketing agency to comply with the no call laws and such procedures;
- C. Provide a copy of the written procedures Defendant adopts pursuant to paragraph A above to the Texas Attorney General's Office no later than thirty (30) days after the effective date of the Judgment by mailing same to the undersigned attorney;
- D. Provide a copy of the written procedures Defendant adopts pursuant to paragraph A above to all current and future employees of Defendant who conduct telemarketing calls in Texas or who have any supervisory capacity over any employee who conducts telemarketing calls in Texas; and
- E. Institute a training program for all employees who conduct telemarketing calls in Texas in which employees will receive instruction in customer relations, etiquette, and compliance with all legally binding no call laws, including but not limited to the TTDPA, and the written procedures Defendant adopts pursuant to paragraph A above.

IT IS FURTHER ORDERED that Defendant is permanently enjoined from representing, directly or by implication, that this Court or the Attorney General has approved any of Defendant's business practices.

IT IS FURTHER ORDERED that Defendant is permanently enjoined from entering into,

forming, organizing, or reorganizing into any partnership, corporation, sole proprietorship or any other legal structures, for the purposes of avoiding compliance with the terms of this Agreed Final Judgment and Permanent Injunction.

IV. ATTORNEYS' FEES AND CIVIL PENALTIES

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the STATE OF TEXAS have and recover from Defendant, the sum of Three Thousand Dollars and No/100 (\$3000.00) to reimburse investigative costs and attorneys' fees. This amount is due and payable on September 1, 2004. All payments under this Agreement shall be remitted by money order or certified check made payable to the "Texas Attorney General," bearing the reference **A.G. #031860679** and delivered to the attention of Paul D. Carmona, Chief, Consumer Protection and Public Health Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the STATE OF TEXAS have and recover from Defendant, the sum of Ten Thousand Dollars and No/100 (\$10,000.00) as civil penalties pursuant to the TTDPA. Such civil penalties shall be due and payable to the State at the earlier of: (i) a date one year from the Effective Date of this Judgment; or (ii) the date a Court signs an order that Defendant has not achieved and maintained substantial compliance with all injunctive requirements set forth in this Judgment. Provided, however, that if Defendant has achieved and maintained substantial compliance with all injunctive requirements set forth in this Judgment for one year following the Effective Date of this Judgment and has made all payments otherwise required under this Judgment, the State shall forgive the payment of civil penalties in the amount of Ten Thousand Dollars and No/100 (\$10,000.00). For purposes of this paragraph, Defendant shall specifically not be considered to be in substantial compliance with this Judgment

if the Texas Attorney General's Office and the Texas Public Utility Commission combined receive more than three verifiable complaints against Defendant in any thirty day period or more than twenty total complaints against Defendant within one year of the Effective Date of this Judgment;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant be assessed all costs herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all relief not granted herein is hereby denied.

SIGNED AND ENTERED this _____ day of _____, 2004.

Presiding District Judge

AGREED this _____ day of _____, 2004.

GREG ABBOTT
Attorney General of Texas

BARRY R. McBEE
First Assistant Attorney General

EDWARD D. BURBACH
Deputy Attorney General for Litigation

PAUL D. CARMONA
Chief, Consumer Protection Division

NANETTE DINUNZIO
State Bar No. 24036484
C. BRAD SCHUELKE
State Bar No. 24008000
Assistant Attorneys General
CONSUMER PROTECTION DIVISION
P. O. Box 12548
Austin, Texas 78711
(512) 475-4654
FAX (512) 473-8301
Attorneys for the STATE OF TEXAS

WILLIAM H. MARRA, Defendant